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Attorneys for Defendant, **HOLLYWOOD SHOW, LLC**

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BARRY ROSEN,

Plaintiff,

vs.

MICHAEL "MIKE" MEDLIN DBA
AFFORDABLE AUTOGRAPHS,
AFFORDABLE AUTOGRAPHS
HOLLYWOOD; HOLLYWOOD
SHOW, LLC, a California Limited
Liability Company and Does 1 through
10, Inclusive,

Defendants.

Case No.: 2:15-cv-05789-ODW-JC

Assigned to Hon. Otis D. Wright III

**DEFENDANT HOLLYWOOD
SHOW, LLC'S ANSWER TO
FIRST AMENDED COMPLAINT
AND DEMAND FOR JURY
TRIAL**

Defendant HOLLYWOOD SHOW, LLC. hereby answers the First
Amended Complaint for Copyright Infringement and Vicarious and/or
Contributory Copyright Infringement ("Complaint") by Plaintiff BARRY ROSEN,
as follows:

PARTIES

1. In response to Paragraph 1 of the Complaint, Defendant is without sufficient
knowledge or information to form a belief as to the truth of the allegations
contained in this paragraph - and on that basis denies each and every allegation
contained therein.

2. In response to Paragraph 2 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

3. In response to Paragraph 3 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph, and on that basis denies each and every allegation contained therein.

4. In response to Paragraph 4 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

5. In response to Paragraph 5 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

6. In response to Paragraph 6 of the Complaint, Defendant is an active limited liability company doing business in California.

7. In response to Paragraph 7 of the Complaint, Defendant admits to operating the Hollywood Show at the Westin LAX Hotel where attendees can, if they wish, to meet celebrities and purchase various items.

8. In response to Paragraph 8 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

9. In response to Paragraph 9 of the Complaint, Defendant denies that it was the agent, affiliate, officer, director, manager, principal, officer, director, agent, employee, representative, and/or co-conspirator of any other defendant named in

1 the Complaint at any time or in any context relevant to the allegations of the
2 Complaint; Except as so denied, Defendant is without sufficient knowledge or
3 information to form a belief as to the truth of the other allegations contained in
4 Paragraph 9 of the Complaint - and on that basis denies each and every such other
5 allegation contained therein.

6 JURISDICTION AND VENUE

7 10. In response to Paragraph 10 of the Complaint, Defendant Hollywood Show,
8 LLC., incorporates by reference its responses in Paragraphs 1 through 9,
9 inclusive, above.

10 11. In response to paragraph 11 of the Complaint, this paragraph states a legal
11 conclusion to which no response is required; but to the extent a response is
12 appropriate, Defendant admits that this is an action for alleged copyright
13 infringement. Except as so admitted, Defendant denies each and every allegation
14 contained in Paragraph 11 of the Complaint.

15 12. In response to Paragraph 12 of the Complaint, this paragraph states legal
16 conclusions to which no responses are required; but to the extent a response is
17 appropriate, Defendant admits that the venue is proper. Defendant is without
18 sufficient knowledge or information to form a belief as to the truth of the other
19 allegations of Paragraph 12 of the Complaint - and on that basis denies each and
20 every such other allegation contained therein.

21 13. In response to Paragraph 13 of the Complaint, this paragraph states a legal
22 conclusion to which no response is required; but to the extent a response is
23 appropriate, Defendant is without sufficient knowledge or information to form a
24 belief as to the truth of the allegations of Paragraph 13 of the Complaint - and on
25 that basis denies each and every allegation contained therein.

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FACTUAL ALLEGATIONS

14. In response to Paragraph 14 of the Complaint, Defendant Hollywood Show, LLC., incorporates by reference its responses in Paragraphs 1 through 13, inclusive, above.

15. In response to Paragraph 15 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

16. In response to Paragraph 16 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation obtained therein.

17. In response to Paragraph 17 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

18. In response to Paragraph 18 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained therein.

19. In response to Paragraph 19 of the Complaint, Defendant admits that Mike Medlin was vendor a Hollywood Show prior to July 2015. Defendant also admits that Mike Medlin was a vendor at the Hollywood Show in July 2015. Except as so admitted or denied, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph - and on that basis denies each and every allegation contained in Paragraph 19 of the Complaint.

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1 20. In response to Paragraph 20 of the Complaint, Defendant admits that Mike
2 Medlin was vendor a Hollywood Show prior to July 2015. Defendant also admits
3 that Mike Medlin was a vendor at the Hollywood Show in July 2015. Except as so
4 admitted or denied, Defendant is without sufficient knowledge or information to
5 form a belief as to the truth of the allegations contained in this paragraph - and on
6 that basis denies each and every allegation contained in Paragraph 20 of the
7 Complaint.

8 21. In response to Paragraph 21 of the Complaint, Defendant denies that it
9 operated or supervised the Hollywood Show such that Mike Medlin was publicly
10 displaying and distributing Plaintiff's copyrighted photographs.

11 22. In response to Paragraph 22 of the Complaint, Defendant admits that it has a
12 document called a "Hollywood Show Vendor Contract" that allows Defendant to
13 restrict or remove exhibits or merchandise in its sole discretion when it is
14 unsuitable, of inferior quality, of questionable authenticity, or anything of a
15 character which might reflect badly upon Hollywood Show." Except as so
16 admitted or denied, Defendant is without sufficient knowledge or information to
17 form a belief as to the truth of the allegations contained in this paragraph - and on
18 that basis denies each and every allegation contained in Paragraph 22 of the
19 Complaint.

20 23. In response to Paragraph 23 of the Complaint, Defendant denies that it had
21 been aware of any infringing activities by Mike Medlin in 2013. Defendant also
22 denies that it allowed Medlin to participate in Hollywood Show events and/or
23 advertise his presence at the Hollywood with knowledge that he was participating
24 in infringing activities. Except as so denied, Defendant is without sufficient
25 knowledge or information to form a belief as to the truth of the allegations
26 contained that Mike Medlin was participating in any infringing activities - and on
27 that basis denies each and every allegation contained in Paragraph 23 of the
28 Complaint.

1 24. In response to Paragraph 24 of the Complaint, Defendant is without
2 sufficient knowledge or information to form a belief as to the truth of the
3 allegations contained in this paragraph - and on that basis denies each and every
4 allegation contained therein.

5 25. In response to Paragraph 25 of the Complaint, Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the
7 allegations contained in this paragraph - and on that basis denies each and every
8 allegation contained therein.

9 26. In response to Paragraph 26 of the Complaint, Defendant is without
10 sufficient knowledge or information to form a belief as to the truth of the
11 allegations contained in this paragraph - and on that basis denies each and every
12 allegation contained therein.

13 27. In response to Paragraph 27 of the Complaint, Defendant, Hollywood Show,
14 LLC., denies that it was in violation of Plaintiff's registered copyright. Except as
15 so denied, Defendant is without sufficient knowledge or information to form a
16 belief as to the truth of the allegations contained in this paragraph - and on that
17 basis denies each and every allegation contained in Paragraph 27 of the
18 Complaint.

19 28. In response to Paragraph 28 of the Complaint, Defendant, Hollywood Show,
20 LLC., denies that it sold other unauthorized prints of Plaintiff's images. Except as
21 so denied, Defendant is without sufficient knowledge or information to form a
22 belief as to the truth of the allegations contained in this paragraph - and on that
23 basis denies each and every allegation contained in Paragraph 28 of the
24 Complaint.

25 29. In response to Paragraph 29 of the Complaint, Defendant, Hollywood Show,
26 LLC., denies that it displayed, uploaded/downloaded and distributed Plaintiff's
27 copyrighted photographs without a license on ebay. Except as so denied,
28 Defendant is without sufficient knowledge or information to form a belief as to the

1 truth of the allegations contained in this paragraph - and on that basis denies each
2 and every allegation contained in Paragraph 29 of the Complaint.

3 30. In response to Paragraph 30 of the Complaint, Defendant, Hollywood Show,
4 LLC., denies that it without authorization or permission unlawfully
5 copied/reproduced, uploaded/downloaded, caused to be uploaded/downloaded,
6 publicly displayed, distributed, and sold Plaintiff's photographs on the World
7 Wide Web via ebay. Except as so denied, Defendant is without sufficient
8 knowledge or information to form a belief as to the truth of the allegations
9 contained in this paragraph - and on that basis denies each and every allegation
10 contained in Paragraph 30 of the Complaint.

11 31. In response to Paragraph 31 of the Complaint, Defendant, Hollywood Show,
12 LLC., denies that it without authorization or permission unlawfully
13 copied/reproduced, uploaded/downloaded, caused to be uploaded/downloaded,
14 publicly displayed, distributed, and sold Plaintiff's photographs on the World
15 Wide Web via ebay or infringed on Plaintiff's copyright in anyway. Except as so
16 denied, Defendant is without sufficient knowledge or information to form a belief
17 as to the truth of the allegations contained in this paragraph - and on that basis
18 denies each and every allegation contained in Paragraph 31 of the Complaint.

19 32. In response to paragraph 32 of the Complaint, this paragraph states a legal
20 conclusion to which no response is required; but to the extent a response is
21 appropriate, Defendant, Hollywood Show, LLC., denies that it without
22 authorization or permission unlawfully copied/reproduced, uploaded/downloaded,
23 caused to be uploaded/downloaded, publicly displayed, distributed, and sold
24 Plaintiff's photographs on the World Wide Web via ebay or infringed on
25 Plaintiff's copyright in anyway. As such it denies any for a preliminary or
26 permanent injunction. Except as so denied, Defendant is without sufficient
27 knowledge or information to form a belief as to the truth of the allegations

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1 contained in this paragraph - and on that basis denies each and every allegation
2 contained in Paragraph 32 of the Complaint.

3 33. In response to paragraph 33 of the Complaint, this paragraph states a legal
4 conclusion to which no response is required; but to the extent a response is
5 appropriate, Defendant is without sufficient knowledge or information to form a
6 belief as to the truth of the allegations contained in this paragraph - and on that
7 basis denies each and every allegation contained in Paragraph 33 of the
8 Complaint.

9 **FIRST CLAIM FOR RELIEF**

10 **DIRECT COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C. 106**

11 **and 501**

12 34. In response to Paragraph 34 of the Complaint, Defendant Hollywood Show,
13 LLC., incorporates by reference its responses in Paragraphs 1 through 33,
14 inclusive, above.

15 35. In response to Paragraph 35 of the Complaint, Defendant is without
16 sufficient knowledge or information to form a belief as to the truth of the
17 allegations contained in this paragraph - and on that basis denies each and every
18 allegation contained therein.

19 36. In response to Paragraph 36 of the Complaint, Defendant is without
20 sufficient knowledge or information to form a belief as to the truth of the
21 allegations contained in this paragraph - and on that basis denies each and every
22 allegation contained therein.

23 37. In response to Paragraph 36 of the Complaint, Defendant is without
24 sufficient knowledge or information to form a belief as to the truth of the
25 allegations contained in this paragraph - and on that basis denies each and every
26 allegation contained therein.

27 38. In response to Paragraph 36 of the Complaint, Defendant is without
28 sufficient knowledge or information to form a belief as to the truth of the

1 allegations contained in this paragraph - and on that basis denies each and every
2 allegation contained therein.

3 39. In response to Paragraph 36 of the Complaint, Defendant is without
4 sufficient knowledge or information to form a belief as to the truth of the
5 allegations contained in this paragraph - and on that basis denies each and every
6 allegation contained therein.

7 40. In response to Paragraph 36 of the Complaint, Defendant is without
8 sufficient knowledge or information to form a belief as to the truth of the
9 allegations contained in this paragraph - and on that basis denies each and every
10 allegation contained therein.

11 41. In response to Paragraph 36 of the Complaint, Defendant is without
12 sufficient knowledge or information to form a belief as to the truth of the
13 allegations contained in this paragraph - and on that basis denies each and every
14 allegation contained therein.

15 **SECOND CLAIM FOR RELIEF**

16 **SECONDARY COPYRIGHT INFRINGEMENT PURSUANT TO 17 U.S.C.**

17 **106 and 501 (Contributory and Vicarious)**

18 42. In response to Paragraph 42 of the Complaint, Defendant Hollywood Show,
19 LLC., incorporates by reference its responses in Paragraphs 1 through 41,
20 inclusive, above.

21 43. In response to Paragraph 43 of the Complaint, Defendant denies each and
22 every allegation contained therein.

23 44. In response to Paragraph 44 of the Complaint, Defendant admits that at the
24 time of the July 2015 Hollywood Show, David Elkouby was a managing member
25 of Hollywood Show, LLC. Except as so admitted, Defendant is without sufficient
26 knowledge or information to form a belief as to the truth of the allegations
27 contained in this paragraph- and on that basis denies each and every allegation
28 contained in Paragraph 44 of the Complaint.

1 45. In response to Paragraph 45 of the Complaint, Defendant denies each and
2 every allegation contained therein.

3 46. In response to Paragraph 46 of the Complaint, Defendant denies each and
4 every allegation contained therein.

5 47. In response to Paragraph 47 of the Complaint, Defendant denies each and
6 every allegation contained therein.

7 48. In response to Paragraph 48 of the Complaint, Defendant denies each and
8 every allegation contained therein.

9 49. In response to Paragraph 49 of the Complaint, Defendant denies each and
10 every allegation contained therein.

11 50. In response to Paragraph 50 of the Complaint, Defendant denies each and
12 every allegation contained therein.

13 **RESPONSE TO PRAYER FOR RELIEF**

14 In response to Plaintiff's Prayer for Relief, Defendant Hollywood Show,
15 LLC., denies that Plaintiff is entitled to injunctive relief of any sort against
16 Defendant; Defendant denies that Plaintiff is entitled to a monetary award of any
17 sort (whether damages, statutory damages, losses, profits, attorneys' fees, interest,
18 costs, or anything else) against Defendant; and Defendant denies that Plaintiff is
19 entitled to any other relief from Defendant.

20 **SEPARATE DEFENSES**

21 As separate and distinct defenses to the Complaint, and to each and every
22 purported claim thereof, Defendant Hollywood Show, LLC. alleges:

23 **FIRST SEPARATE DEFENSE**

24 1. The Complaint, and each and every purported claim for relief thereof, is
25 barred (in whole or in part) because Defendant has not infringed and is not liable
26 for the infringement of the purported copyright that Plaintiff asserts in this action,
27 among other things, because there is no substantial similarity between any
28 purportedly infringing products and Plaintiff's purported copyrighted work or

1 works, and in particular no substantial similarity with respect to any purported
2 constituent original and protectible elements of Plaintiffs purported copyrighted
3 work or works.

4 **SECOND SEPARATE DEFENSE**

5 2. The Complaint, and each and every purported claim for relief thereof, is
6 barred (in whole or in part) because Defendant has not infringed and is not liable
7 for the infringement of the purported copyright or copyrights that Plaintiff asserts
8 in this action, among other things, because Defendant is informed and believes
9 and on that basis alleges that any purportedly infringing products have not copied
10 any purported constituent original and protectible elements of Plaintiff's purported
11 copyrighted work or works, with a reasonable opportunity for investigation or
12 discovery being likely to provide evidentiary support.

13 **THIRD SEPARATE DEFENSE**

14 3. Defendant is informed and believes and on that basis alleges that the
15 Complaint, and each and every purported claim for relief thereof, is barred (in
16 whole or in part) because the purported copyright that Plaintiff asserts in this
17 action is invalid, void, or unenforceable. Among other things, a reasonable
18 opportunity for further investigation or discovery is likely to provide evidentiary
19 support for one or more of the following:

- 20 (a) the registration or registrations for the purported copyright or copyrights claims
21 material that is not original or not protectible;
22 (b) the registration or registrations for the purported copyright or copyrights
23 claims material originally developed by persons or entities other than Plaintiff;
24 (c) the registration or registrations for the purported copyright or copyrights claims
25 material in the public domain

26 **FOURTH SEPARATE DEFENSE**

27 4. Defendant is informed and believes and on that basis alleges that the
28 Complaint, and each and every purported claim for relief thereof, is barred (in

1 whole or in part) by Plaintiff's fraud or deception in the copyright registration
2 process for which a reasonable opportunity for investigation or discovery is likely
3 to provide evidentiary support.

4 **FIFTH SEPARATE DEFENSE**

5 5. Defendant is informed and believes and on that basis alleges that the
6 Complaint, and each and every purported claim for relief thereof, is barred (in
7 whole or in part) by Plaintiff's misuse of the purported copyright or copyrights for
8 which a reasonable opportunity for investigation or discovery is likely to provide
9 evidentiary support.

10 **SIXTH SEPARATE DEFENSE**

11 6. Defendant is informed and believes and on that basis alleges that the
12 Complaint, and each and every purported claim for relief thereof, is barred (in
13 whole or in part) by Plaintiff's anticompetitive actions in violation of the Sherman
14 Act, the Clayton Act, or the Cartwright Act for which a reasonable opportunity for
15 investigation or discovery is likely to provide evidentiary support.

16 **SEVENTH SEPARATE DEFENSE**

17 7. Defendant is informed and believes and on that basis alleges that the
18 Complaint, and each and every purported claim for relief thereof, is barred (in
19 whole or in part) because Plaintiff failed to properly mark its alleged copyrighted
20 material and to give Defendant proper notice of its claimed copyright for which a
21 reasonable opportunity for investigation or discovery is likely to provide
22 evidentiary support.

23 **EIGHTH SEPARATE DEFENSE**

24 8. Defendant is informed and believes and on that basis alleges that the
25 Complaint, and each and every purported claim for relief thereof, is barred (in
26 whole or in part) because of the doctrines of acquiescence, estoppel, or waiver for
27 which a reasonable opportunity for investigation or discovery is likely to provide
28 evidentiary support.

NINTH SEPARATE DEFENSE

9. Defendant is informed and believes and on that basis alleges that the Complaint, and each and every purported claim for relief thereof, is barred (in whole or in part) because of the doctrine of laches, among other things, because Plaintiff has unreasonably delayed in bringing this action by failing to exercise reasonable diligence, and this delay has prejudiced Defendant with a reasonable opportunity for investigation or discovery being likely to provide evidentiary support.

TENTH SEPARATE DEFENSE

10. Defendant is informed and believes and on that basis alleges that the Complaint, and each and every purported claim for relief thereof, is barred (in whole or in part) because Plaintiff, through its conduct, statement, actions, or omissions, impliedly granted Defendant, other defendants in this action, or non-parties to this action an license to hold, use, reproduce, distribute, or sell the materials, works, designs, or products against which Plaintiff asserts its purported copyright or copyrights in this action with a reasonable opportunity for investigation or discovery being likely to provide evidentiary support.

ELEVENTH SEPARATE DEFENSE

11. Defendant is informed and believes and on that basis alleges that the Complaint, and each and every purported claim for relief thereof, is barred (in whole or in part) because of Plaintiff's unclean hands for which a reasonable opportunity for investigation or discovery is likely to provide evidentiary support.

TWELFTH SEPARATE DEFENSE

12. Defendant is informed and believes and on that basis alleges that the Complaint, and each and every purported claim for relief thereof, is barred (in whole or in part) because Defendant was privileged and justified in acting as it did as a company acting for business purposes in the marketplace, protected by the

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1 privilege for competitors with a reasonable opportunity for investigation or
2 discovery being likely to provide evidentiary support.

3 **THIRTEENTH SEPARATE DEFENSE**

4 13. Defendant is informed and believes and on that basis alleges that the
5 Complaint, and each and every purported claim for relief thereof, is barred (in
6 whole or in part) because Plaintiff has failed to name as defendants parties
7 necessary for a full and complete adjudication of its claims, including without
8 limitation as required by Rule 19 of the Federal Rules of Civil Procedure with a
9 reasonable opportunity for investigation or discovery being likely to provide
10 evidentiary support.

11 **FOURTEENTH SEPARATE DEFENSE**

12 14. The Complaint, and each and every purported claim for relief thereof, is
13 barred (in whole or in part) by the applicable statute of limitations, and among
14 other things, Plaintiff is barred from seeking recovery for any of Defendant's
15 alleged infringements occurring more than three years before the filing of the
16 Complaint, under Section 507 of Title 17 of the United States Code.

17 **FIFTEENTH SEPARATE DEFENSE**

18 15. Defendant is informed and believes and on that basis alleges that the
19 Complaint, and each and every purported claim for relief thereof, is barred (in
20 whole or in part) is barred because Plaintiff has failed to join parties, including
21 without limitation others claiming ownership of the alleged copyright or
22 copyrights asserted by Plaintiff in this action, which are necessary for a full and
23 complete adjudication of its claims, including without limitation as required by
24 Rule 19 of the Federal Rules of Civil Procedure - for which a reasonable
25 opportunity for investigation or discovery is likely to provide evidentiary support.

26 **SIXTEENTH SEPARATE DEFENSE**

27 16. Defendant is informed and believes and on that basis alleges that the
28 Complaint, and each and every purported claim for relief thereof, is barred (in

1 whole or in part) is barred because Plaintiff has sustained no loss or damages for
2 which a reasonable opportunity for investigation or discovery is likely to provide
3 evidentiary support.

4 **SEVENTEENTH SEPARATE DEFENSE**

5 17. If Plaintiff suffered any damages, which Defendant denies, Defendant is
6 informed and believes and on that basis alleges that Plaintiff's damages were not
7 proximately caused by any acts or omissions (wrongful or otherwise) of Defendant
8 for which a reasonable opportunity for investigation or discovery is likely to
9 provide evidentiary support.

10 **EIGHTEENTH SEPARATE DEFENSE**

11 18. If Plaintiff suffered any damages, which Defendant denies, Defendant is
12 informed and believes and on that basis alleges that that individuals or entities
13 other than Plaintiff were careless and negligent in and about the matters alleged in
14 the Complaint and that this carelessness and negligence proximately contributed to
15 or caused any purported damages to Plaintiff with a reasonable opportunity for
16 investigation or discovery being likely to provide evidentiary support; and should
17 Plaintiff recover any damages, Defendant is entitled to have the damages reduced
18 or eliminated to the extent that third parties contributed to or caused the damages.

19 **NINETEENTH SEPARATE DEFENSE**

20 19. If Plaintiff suffered any damages, which Defendant denies, Defendant is
21 informed and believes and on that basis alleges that Plaintiff failed to discharge its
22 duty to mitigate damages for which a reasonable opportunity for investigation or
23 discovery is likely to provide evidentiary support; and any damages awarded to
24 Plaintiff should be reduced accordingly.

25 **TWENTIETH SEPARATE DEFENSE**

26 20. If Plaintiff suffered any damages, which Defendant denies, Defendant acted
27 in good faith, innocent of any knowledge or intent to infringe Plaintiff's rights or
28 cause damage to Plaintiff; and if such good faith and lack of intent does not

1 preclude liability, any general or statutory damages awarded to Plaintiff should be
2 reduced accordingly.

3 **TWENTY-FIRST SEPARATE DEFENSE**

4 21. The Complaint, and each and every purported claim for relief thereof, fails
5 to state facts sufficient to permit recovery of statutory damages against Defendant;
6 and therefore, no such award should be granted.

7 **TWENTY-SECOND SEPARATE DEFENSE**

8 22. The Complaint, and each and every purported claim for relief thereof, fails
9 to state facts sufficient to permit recovery of attorneys' fees against Defendant; and
10 therefore, no such award should be granted.

11 **TWENTY-THIRD SEPARATE DEFENSE**

12 23. As Defendant lacks sufficient knowledge or information to form a belief as
13 to whether it may have additional separate or affirmative defenses not stated in
14 this Answer to Complaint, Defendant reserves the right to assert additional
15 separate or affirmative defenses based on further discovery, investigation, or
16 analysis.

17 **COUNTERCLAIM FOR DECLARATION OF NONINFRINGEMENT AND**
18 **SCOPE OF COPYRIGHT**

19 1. Defendant (and Counterclaimant) Hollywood Show, LLC., asserts this
20 Counterclaim against Plaintiff (and Counterdefendant) Barry Rosen, pursuant to
21 Rule 13 of the Federal Rules of Civil Procedure and under the Declaratory
22 Judgment Act, Title 28 of the United States Code, Sections 2201 and 2202. As set
23 forth in this Counterclaim, there is an actual, substantial, and continuing
24 justiciable controversy between Defendant and Plaintiff concerning the alleged
25 infringement and the scope of the copyrights asserted in this action, as alleged in
26 the Complaint in this action.

27 2. This Court has subject matter jurisdiction over the claims in this action
28 under Title 28 of the United States Code, Sections 1331 (federal question), and

1 1338(a) (Acts of Congress relating to copyrights) and Title 17 of the United States
2 Code, Sections 101 et seq. (the Copyright Act). Among other things, the claims in
3 this action relate to questions regarding federal copyright law and federal
4 copyright registrations.

5 3. Plaintiff claims to be the present owner of all right, title, and interest in and
6 to the above-mentioned copyright or copyrights asserted in this action. Plaintiff
7 has alleged that Defendant is liable for infringing these copyrights, as set forth in
8 the Complaint.

9 4. Defendant has not infringed and is not infringing and is not in any way
10 liable for infringement of the copyrights asserted in this action through the sale of
11 the photographs alleged in the Complaint - as Defendant sets forth specifically in
12 its denials of Plaintiff's factual contentions in and the Separate Defenses of its
13 Answer to which this Counterclaim is appended, all of which are incorporated
14 here by reference. Absent a declaration of the proper scope (if any) of any
15 copyrights asserted in this action - and of the non-infringement of any copyrights
16 asserted in this action - Plaintiff will continue to assert any such copyrights against
17 Defendant and will in this way cause damage to Defendant.

18 5. By this Counterclaim, Defendant seeks a declaratory judgment as to the
19 scope of any copyrights asserted in this action, including, without limitation,
20 which elements, if any, of each of the "Photographs" (as that term is used in the
21 Complaint) are protectible under federal copyright law and for which Plaintiff has
22 exclusive rights of use under federal copyright law under the alleged copyright
23 registration; and Defendant seeks a declaratory judgment that it has not infringed
24 and is not infringing and is not otherwise liable for the infringement of the
25 copyright asserted in this action.

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PRAYER FOR RELIEF

WHEREFORE, Defendant and Counterclaimant Hollywood Show, LLC., prays as follows:

1. That Plaintiff takes nothing, whether in the form of damages or injunctive relief, by its Complaint;
2. For a judgment dismissing the Complaint with prejudice;
3. For a judgment defining the scope of each of the copyrights asserted in this action including, without limitation, which elements, if any, of each of the designs in which Plaintiff claims rights as alleged in the Complaint are protectible under federal copyright law and for which Plaintiff has exclusive rights of use under federal copyright law under the alleged copyright registration;
4. For a judgment declaring that Defendant has not infringed and is not infringing Plaintiff's alleged copyrights asserted in this action;
5. For costs of suit including, without limitation, reasonable attorneys' fees as may be allowed under Section 505 of Title 17 of the United States Code and as may otherwise be allowed by law; and
6. For such other and further relief as the Court deems just and proper.

Dated: October 30, 2015

NORTON AND MELNIK, APC

By: /s/ Geoffrey P. Norton
GEOFFREY P. NORTON
ROBERT GRAVICH
Attorneys for Defendants,
HOLLYWOOD SHOW, LLC